

Chapter 8a

Transfer of Retail License Act

Part 1

General Provisions

32B-8a-101 Title.

This chapter is known as the "Transfer of Retail License Act."

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session

32B-8a-102 Definitions.

As used in this chapter:

- (1) "Business entity" means a corporation, partnership, limited liability company, sole proprietorship, or similar entity.
- (2) "Transfer fee" means a fee described in Section 32B-8a-303.
- (3) "Transferee" means a person who intends to hold a retail license after the transfer of the retail license if the transfer is approved by the commission under this chapter.
- (4) "Transferor" means a retail licensee who intends to transfer a retail license held by the retail licensee if the transfer is approved by the commission under this chapter.

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session

Part 2

Transferability of Retail License

32B-8a-201 Transferability of retail license.

- (1)
 - (a) A retail license is separate from other property of a retail licensee.
 - (b) Notwithstanding Subsection (1)(a), the Legislature may terminate or modify the existence of any type of retail license.
 - (c) Except as provided in this chapter, a person may not:
 - (i) transfer a retail license from one location to another location; or
 - (ii) sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the retail license to another person whether for monetary gain or not.
 - (d) If approved by the commission and subject to the requirements of this chapter, a retail licensee may transfer a retail license:
 - (i) from the retail licensee to another person, regardless of whether it is for the same premises; and
 - (ii) from one premises of the retail licensee to another premises of the retail licensee.
- (2)
 - (a) The commission may not approve the transfer of a retail license that results in a transferee holding a different type of retail license than is held by the transferor.

- (b) The commission may not approve the transfer of a retail license from one location to another location, if the location of the premises to which the retail license would be transferred is in a different county than the location of the licensed premises of the retail license being transferred.
- (3) The commission may not approve the transfer of a retail license if the transferee:
 - (a) is not eligible to hold the same type of retail license as the retail license to be transferred at the premises to which the retail license would be transferred; or
 - (b) is delinquent in the payment of any of the following that arises in full or in part out of the operation of a retail license:
 - (i) a tax, fee, or charge due under this title or Title 59, Revenue and Taxation; or
 - (ii) an amount due under Title 35A, Chapter 4, Employment Security Act.
- (4) This chapter does not apply to a:
 - (a) master full-service restaurant license; or
 - (b) master limited-service restaurant license.

Amended by Chapter 349, 2013 General Session
Revisor instructions Chapter 349, 2013 General Session

32B-8a-202 Effect of transfer of ownership of business entity.

- (1)
 - (a) When the ownership of 51% or more of the shares of stock of a corporation is acquired by or transferred to one or more persons who did not hold the ownership of 51% of those shares of stock on the date a retail license is issued to the corporation, the corporation shall comply with this chapter to transfer the retail license to the corporation as if the corporation is newly constituted.
 - (b) When there is a new general partner or when the ownership of 51% or more of the capital or profits of a limited partnership is acquired by or transferred to one or more persons as general or limited partners and who did not hold ownership of 51% or more of the capital or profits of the limited partnership on the date a retail license is issued to the limited partnership, the limited partnership shall comply with this chapter to transfer the retail license to the limited partnership as if the limited partnership is newly constituted.
 - (c) When the ownership of 51% or more of the interests in a limited liability company is acquired by or transferred to one or more persons as members who did not hold ownership of 51% or more of the interests in the limited liability company on the date a retail license is issued to the limited liability company, the limited liability company shall comply with this chapter to transfer the retail license to the limited liability company as if the limited liability company is newly constituted.
- (2) If a business entity fails to comply with this section within 30 days of the day on which the event described in Subsection (1) occurs, the business entity's retail license is automatically forfeited.

Amended by Chapter 82, 2016 General Session

32B-8a-203 Operational requirements for transferee.

- (1)
 - (a) A transferee shall begin operations of the retail license within 30 days from the day on which a transfer is approved by the commission, except that:
 - (i) the department may grant an extension of this time period not to exceed 30 days; and

- (ii) after the extension is authorized by the department under Subsection (1)(a)(i), the commission may grant one or more additional extensions not to exceed, in the aggregate, seven months from the day on which the commission approves the transfer, if the transferee can demonstrate to the commission that the transferee:
 - (A) cannot begin operations because the transferee is improving the licensed premises;
 - (B) has obtained a building permit for the improvements described in Subsection (1)(a)(ii)(A); and
 - (C) is working expeditiously to complete the improvements to the licensed premises.
- (b) A transferee is considered to have begun operations of the retail license if the transferee:
 - (i) has a licensed premises that is open to the public;
 - (ii) sells, offers for sale, or furnishes alcoholic products to a patron on the licensed premises described in Subsection (1)(b)(i); and
 - (iii) has a valid business license.
- (2) If a transferee fails to begin operations of the retail license within the time period required by Subsection (1), the following are automatically forfeited effective immediately:
 - (a) the retail license; and
 - (b) the retail license fee.
- (3) A transferee shall begin operations of the retail license at the location to which the transfer applies before the transferee may seek a transfer of the retail license to a different location.
- (4) Notwithstanding Subsection (1), the commission may not issue a conditional license unless the requirements of Section 32B-5-205 are met, except that the time periods required by this section supersede the time period provided in Section 32B-5-205.

Amended by Chapter 82, 2016 General Session

Part 3

Process for Transferring a Retail License

32B-8a-302 Application -- Approval process.

- (1) To obtain the transfer of a retail license from a retail licensee, the transferee shall file a transfer application with the department that includes:
 - (a) an application in the form provided by the department;
 - (b) a statement as to whether the consideration, if any, to be paid to the transferor includes payment for transfer of the retail license;
 - (c) a statement executed under penalty of perjury that the consideration as set forth in the escrow agreement required by Section 32B-8a-401 is deposited with the escrow holder; and
 - (d)
 - (i) an application fee of \$300; and
 - (ii) a transfer fee determined in accordance with Section 32B-8a-303.
- (2) If the intended transfer of a retail license involves consideration, at least 10 days before the commission may approve the transfer, the department shall post a notice of the intended transfer on the Public Notice Website created in Section 63F-1-701 that states the following:
 - (a) the name of the transferor;
 - (b) the name and address of the business currently associated with the retail license;
 - (c) instructions for filing a claim with the escrow holder; and
 - (d) the projected date that the commission may consider the transfer application.

- (3)
 - (a)
 - (i) Before the commission may approve the transfer of a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether the transfer of the retail license should be approved.
 - (ii) The department shall forward the information and recommendations described in this Subsection (3)(a) to the commission to aid in the commission's determination.
 - (b) Before approving a transfer, the commission shall:
 - (i) determine that the transferee filed a complete application;
 - (ii) determine that the transferee is eligible to hold the type of retail license that is to be transferred at the premises to which the retail license would be transferred;
 - (iii) determine that the transferee is not delinquent in the payment of an amount described in Subsection 32B-8a-201(3);
 - (iv) determine that the transferee is not disqualified under Section 32B-1-304;
 - (v) consider the locality within which the proposed licensed premises is located, including the factors listed in Section 32B-5-203 for the issuance of a retail license;
 - (vi) consider the transferee's ability to manage and operate the retail license to be transferred, including the factors listed in Section 32B-5-203 for the issuance of a retail license;
 - (vii) consider the nature or type of retail licensee operation of the transferee, including the factors listed in Section 32B-5-203 for the issuance of a retail license;
 - (viii) if the transfer involves consideration, determine that the transferee and transferor have complied with Part 4, Protection of Creditors; and
 - (ix) consider any other factor the commission considers necessary.
- (4)
 - (a) Except as provided in Subsection (4)(b), the commission may not approve the transfer of a retail license to premises that do not meet the proximity requirements of Section 32B-1-202.
 - (b) If after a transfer of a retail license the transferee operates the same type of retail license at the same location as did the transferor, the commission may waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the transfer under the same circumstances that the commission may waive or vary the proximity requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a retail license.

Amended by Chapter 82, 2016 General Session

32B-8a-303 Transfer fees.

- (1) Except as otherwise provided in this section, the department shall charge the following transfer fees:
 - (a) for a transfer of a retail license from a retail licensee to another person, the transfer fee equals the initial license fee amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being transferred;
 - (b) for the transfer of a retail license from one premises to another premises of the same retail licensee, the transfer fee equals the renewal fee amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being transferred;
 - (c) subject to Subsections (1)(d) and (2), for a transfer described in Section 32B-8a-202, the transfer fee equals the renewal fee amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being transferred;

- (d) for a transfer of a retail license to include the parent or adult child of a retail licensee, when no consideration is given for the transfer, the transfer fee is one-half of the amount described in Subsection (1)(a); and
- (e) for one of the following transfers, the transfer fee is one-half of the amount described in Subsection (1)(a):
 - (i) a retail license of one spouse to the other spouse when the transfer application is made before the entry of a final decree of divorce;
 - (ii) a retail license of a deceased retail licensee to:
 - (A) the one or more surviving partners of the deceased retail licensee;
 - (B) the executor, administrator, or conservator of the estate of the deceased retail licensee; or
 - (C) the surviving spouse of the deceased retail licensee, if the deceased retail licensee leaves no estate to be administered;
 - (iii) a retail license of an incompetent person or conservatee by or to the conservator or guardian for the incompetent person or conservatee who is the retail licensee;
 - (iv) a retail license of a debtor in a bankruptcy case by or to the trustee of a bankrupt estate of the retail licensee;
 - (v) a retail license of a person for whose estate a receiver is appointed may be transferred by or to a receiver of the estate of the retail licensee;
 - (vi) a retail license of an assignor for the benefit of creditors by or to an assignee for the benefit of creditors of a licensee with the consent of the assignor;
 - (vii) a retail license transferred to a revocable living trust if the retail licensee is the trustee of the revocable living trust;
 - (viii) a retail license transferred between partners when no new partner is being licensed;
 - (ix) a retail license transferred between corporations whose outstanding shares of stock are owned by the same individuals;
 - (x) upon compliance with Section 32B-8a-202, a retail license to a corporation whose entire stock is owned by:
 - (A) the transferor; or
 - (B) the spouse of the transferor;
 - (xi) upon compliance with Section 32B-8a-202, a retail license to a limited liability company whose entire membership consists of:
 - (A) the transferor; or
 - (B) the spouse of the transferor; or
 - (xii) a retail license transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation.
- (2) If there are multiple and simultaneous transfers of retail licenses under Section 32B-8a-202, a transfer fee described in Subsection (1)(c) is required for only one of the retail licenses being transferred.
- (3)
 - (a) Except as provided in Subsection (3)(b), a transfer fee required under Subsection (1) is due for a transfer subsequent to a transfer under Subsection (1)(e)(xii) if the subsequent transfer is of 51% of the stock in a corporation to which a retail license is transferred by a retail licensee or the spouse of a retail licensee.
 - (b) If the transfer of stock described in Subsection (3)(a) is from a parent to the parent's adult child or adult grandchild, the transfer fee is one-half of the amount described in Subsection (1)(a).
- (4) Money collected from a transfer fee shall be deposited in the Liquor Control Fund.

Revisor instructions Chapter 349, 2013 General Session
Amended by Chapter 365, 2012 General Session

Part 4

Protection of Creditors

32B-8a-401 Notification of creditors -- Escrow -- Priority of payments.

- (1) Before the filing of a transfer application with the department, if the intended transfer of a retail license involves consideration:
- (a) the transferor shall provide the transferee a list of creditors who have a claim against the transferor;
 - (b) the transferee shall notify each creditor on the list provided under Subsection (1)(a) of the intended transfer;
 - (c) the transferor and the transferee shall establish an escrow with a person who is not a party to the transfer to act as escrow holder;
 - (d) the transferee shall deposit with the escrow holder the full amount of the consideration; and
 - (e) the transferor and transferee shall enter into an agreement that:
 - (i) the consideration is deposited with the escrow holder;
 - (ii) requires the escrow holder to distribute the consideration within a reasonable time after the completion of the transfer of the retail license; and
 - (iii) directs the escrow holder to distribute the consideration in accordance with Subsection (2).
- (2) Subject to the other requirements of this section, if a creditor with a claim against the transferor files the claim with the escrow holder before the escrow holder is notified by the department that the transfer is approved, the escrow holder shall distribute the consideration in the following order:
- (a) to the payment of:
 - (i) the United States for a claim based on income or withholding taxes; and
 - (ii) a claim based on a tax other than specified in Subsection 32B-8a-201(3);
 - (b) to the payment of a claim for wages, salaries, or fringe benefits earned or accrued by an employee of the transferor before the transfer or opening of the escrow for the transfer of the retail license;
 - (c) to the payment of a claim of a secured creditor to the extent of the proceeds that arise from the sale of the security;
 - (d) to the payment of a claim on a mechanics lien;
 - (e) to the payment of:
 - (i) escrow fees;
 - (ii) a claim for prevailing brokerage fees for services rendered; and
 - (iii) a claim for reasonable attorney fees for services rendered;
 - (f) to the payment of claims:
 - (i) of a landlord, to the extent of proceeds on past due rent or lease requirements;
 - (ii) for goods sold and delivered to the retail licensee for resale at the transferor's licensed premises; and
 - (iii) for services rendered, performed, or supplied in connection with the operation of the transferor's licensed business;
 - (g) to the payment of other types of claims that are reduced to court-ordered judgments, including a claim for court-ordered support of a minor child; and

(h) to the payment of all other claims.

Amended by Chapter 82, 2016 General Session

32B-8a-402 Duties of escrow holder.

- (1) To act as an escrow holder under Section 32B-8a-401, a person shall comply with Title 7, Chapter 22, Regulation of Independent Escrow Agents.
- (2) Not more than 10 days after receiving a claim from a creditor, an escrow holder shall acknowledge receipt of the claim.
- (3)
 - (a) Not more than 10 days after a retail license is transferred and before the distribution of the consideration held by an escrow holder, the escrow holder shall advise each creditor who files a claim against the escrow whether there is sufficient consideration in the escrow to pay all creditors in full.
 - (b) If the consideration in an escrow is sufficient to pay all creditors in full, the escrow holder shall advise each creditor of the date on or before which payment will be made.
 - (c) If there are not sufficient assets to pay all creditors in full, the escrow holder shall advise each creditor who filed a claim of the following:
 - (i) the total assets placed in escrow with the escrow holder;
 - (ii) the nature of each asset;
 - (iii) the name of each creditor who filed a claim against the escrow and the amount of the claim;
 - (iv) the amount the escrow holder proposes to pay each creditor; and
 - (v) the date on or before which the escrow holder will pay each creditor.
- (4) An escrow holder may not release money in the escrow in exchange for:
 - (a) a promissory note; or
 - (b) any other consideration of less value to the creditors than the money exchanged.
- (5) If sufficient assets are not available in the escrow for the payment of the claims in full, the escrow holder shall pay the claims pro rata.
- (6) If the retail licensee who transfers the retail license disputes a claim, the escrow holder shall:
 - (a) notify the creditor making the claim;
 - (b) retain the amount to be paid to the creditor under this section for a period of 25 days; and
 - (c) to the extent that creditors do not successfully recover the amount described in Subsection (6) (b) in accordance with this part, pay the amount to the retail licensee.
- (7) An escrow holder shall distribute the money in the escrow account after the payments made under Subsections 32B-8a-401(2) and this section within a reasonable time after the completion of the transfer of the retail license.

Revisor instructions Chapter 349, 2013 General Session

Enacted by Chapter 334, 2011 General Session

32B-8a-404 When escrow not required.

- (1) Notwithstanding the other provisions of this part, an escrow is not required to be established in connection with the transfer of a retail license if:
 - (a) a business entity files with the department a guaranty of full, prompt, and faithful payment of all claims of a creditor of the retail licensee; and
 - (b) the guaranty described in Subsection (1)(a) is accepted in writing by the creditors listed in Subsection 32B-8a-401(2).
- (2) A transfer of a retail license described in Subsection (1) is not considered complete until:

- (a) the guarantor pays all creditors' claims in full; and
 - (b) the guarantor files with the department a statement executed under penalty of perjury that all conditions of the transfer have been satisfied.
- (3) Payment of a claim by a guarantor shall be made in United States currency or by certified check in a manner acceptable to the creditors.
- (4) This section applies only in the case of a transfer in which the guarantor business entity has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5,000,000.

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session

Part 5

Prohibited Activities

32B-8a-501 License not to be pledged as security -- Prohibited transfers.

- (1) A retail licensee may not enter into any agreement under which the retail licensee pledges the retail license as security for a loan or as security for the fulfillment of any agreement.
- (2) A retail licensee may not transfer a retail license if the transfer is to:
- (a) satisfy a loan or to fulfill an agreement entered into more than 90 days preceding the date on which the transfer application is filed;
 - (b) gain or establish a preference to or for any creditor of the transferor, except as provided by Section 32B-8a-202; or
 - (c) defraud or injure a creditor of the transferor.
- (3) A retail licensee may not transfer a retail license except in accordance with this chapter.

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session

32B-8a-502 Effect of transfer in violation of this chapter.

- (1) If a retail license is transferred in violation of this chapter, the commission may:
- (a) void the transfer; and
 - (b) require the retail license to be forfeited.
- (2) Subsection (1) is in addition to any other penalty under this title that is applicable to the person who violates this chapter.

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Enacted by Chapter 334, 2011 General Session